STATEMENT OF EMERGENCY

907 KAR 1:016E

(1) This emergency administrative regulation is being promulgated to establish the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care.

(2) This action must be taken on an emergency basis to ensure the viability of the Medicaid program and to ensure the appropriateness of care provided to Medicaid recipients.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

_____
Ernie Fletcher
Governor

_____
Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Hospital and Provider Operations

(Emergency Amendment)

907 KAR 1:016E. Psychiatric hospital services.

RELATES TO: KRS 205.520, 210.005, 42 CFR 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441 Subparts C, D, 456 Subparts G, H, I, 42 U.S.C. 1396a-d[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes requirements related to psychiatric hospital services [~~sets forth the provisions relating to services in psychiatric hospitals~~] for which payment shall be made by the Medicaid Program on behalf of [~~in behalf of both~~] the categorically needy and the medically needy.

Section 1. Definitions.

(1) "Chronic" is defined by KRS 210.005(3).

(2) “Department” means the Department for Medicaid Services or its designee.(3) “Emergency” means that a condition or situation requires an emergency service pursuant to 42 CFR 447.53.

(4) "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(5) "Mental illness" is defined by KRS 210.005(2).

(6) “Non-emergency” means that a condition does not require an emergency service pursuant to 42 CFR 447.53.

Section 2. Prior Authorization.

(1) Prior to the delivery of a covered psychiatric hospital service, the service shall be determined by the department to be:

(a) Medically necessary; and

(b) Effective August 1, 2006, clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.

Section 3. Provision of Service.

(1) Inpatient services provided in an appropriately licensed psychiatric hospital participating in the Medicaid program shall be limited to a recipient who:

(a) Meets patient status criteria; and

(b) Is [~~recipients of medical assistance~~] age sixty-five (65) or over; or

(c) Is under age twenty-one (21) [~~meeting patient status criteria~~].

(2) Services shall be provided in accordance with the:

(a) Federal Medicaid requirements; and

(b) [with] Medicaid policies described [shown] in the "Psychiatric Inpatient Facility Utilization and Placement Review Manual.

Section 4. Length of Stay.

(1) A recipient's length of stay in a psychiatric hospital shall be subject to the utilization review mechanism described in the Psychiatric Inpatient Facility Utilization and Placement Review Manual.

(2) If services meet the criteria established in Section 2(1) of this administrative regulation, a recipient who is hospitalized and receives covered psychiatric services prior to his or her twenty-first (21st) birthday may be covered during a continuous period of hospitalization up to age twenty-two (22). [, revised December 28, 1994 which is hereby incorporated by reference and referred to hereafter as "the manual". The manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 2. Durational Limitation. Durational limitation on payment in respect to the aged recipient and children under age twenty-one (21) shall be subject to the utilization review mechanism established by the cabinet and shown in the manual. Notwithstanding a continuing need for psychiatric care, payment for services shall not be continued past the 22nd birthday for patients admitted prior to the 21st birthday.

Section 5 [3]. Condition of Eligibility for Participation. An appropriately accredited psychiatric hospital that participates [desiring to participate] in the Medicaid program shall be required

[~~as a condition of eligibility~~] to participate in the Medicare program if [~~when~~] the hospital serves patients eligible for payment [~~payments~~] under the Medicare program.

Section 6 [4]. Determining Patient Status.

(1) Staff of the department [~~Professional staff of the cabinet or an agency operating under its lawful authority pursuant to the terms of its agreement with the cabinet~~] shall review and evaluate the health status and care needs of a [~~the~~] recipient in need of psychiatric hospital care, giving consideration to the following:

(a) [~~to the~~] Medical diagnosis;

(b) [~~,~~] Care needs;

(c) [~~,~~] Services and health personnel required to meet the recipient's needs; and

(d) [~~, and~~] Ambulatory care services available in the community to meet the recipient's [~~those~~] needs.

(2) A [~~(1) The~~] patient shall not qualify for Medicaid patient status unless:

(a) Care for the individual meets the requirements established in Section 2(1) of this administrative regulation;

(b) The person is qualified for admission[~~,~~] and continued stay as appropriate;

(c) [~~(b)~~] The patient's needs require [~~Their needs mandate~~] psychiatric hospital care on a daily basis; and

(d) [~~(c)~~] [~~As a practical matter,~~] The necessary care can only be provided on an inpatient basis.

(3) [~~(2) The~~] Placement and continued stay criteria described [~~shown~~] in Parts II, III and IV of the manual shall be used to:

(a) Determine patient status;

(b) Ensure that proper treatment of the patient's psychiatric condition [~~individual's psychiatric conditions~~] requires services on an inpatient basis under the direction of a physician;

(c) Ensure that psychiatric hospital services can reasonably be expected to:

1. Improve the recipient's condition;

2. [~~or~~] Prevent further regression so that the services will no longer be needed; or

3. For an adult who is age sixty-five (65) or over and has a chronic mental illness, maintain or restore to the individual to the greatest possible degree of health and independent functioning; and [~~, or, for chronically mentally ill adults age sixty-five (65) and above as described in KRS 210.005, who are admitted to the hospital under a KRS Chapter 202A commitment, maintain the recipient at, or restore him to, the greatest possible degree of health and independent functioning; for individuals age sixty-five (65) or over residing in a psychiatric hospital on December 28, 1994, the requirement for admission under a commitment pursuant to KRS Chapter 202A shall not be applicable if the individual continues to reside in the same hospital; and~~]

(d) Ensure that ambulatory care or alternative services available in the community are not sufficient to meet the treatment needs of the recipient.

Section 7 [~~5~~]. Reevaluation of Need for Services.

(1) Each psychiatric hospital stay [~~All mental hospital stays~~] shall be certified for a specific length of time if [~~, as deemed medically appropriate by the utilization review organization considering~~ the health status and care needs of the applicant or recipient meet the requirements established in Section 2(1) of this administrative regulation.

(2) Patient status shall be reevaluated at least once every thirty (30) days.

(3) Upon [~~the~~] expiration of the certified length of stay, the Medicaid Program shall not

be responsible for the cost of care unless:

(a) A request is made by the recipient or the recipient's [~~his~~] authorized representative; [~~requests~~] and

(b) The utilization review organization certifies additional days.

Section 8 [~~6~~]. Reconsideration and Appeals. If [~~When~~] an adverse determination is appealed by an [~~the~~] applicant or a recipient, the action [~~decision~~] shall be reviewed by the department as described in the Psychiatric Inpatient Facility Utilization and Placement Review Manual.

Section 9. Incorporation by Reference. (1) The "Psychiatric Inpatient Facility Utilization and Placement Review Manual, July 2006 edition", Department for Medicaid Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [~~cabinet (or its representative) using time frames specified in the manual to determine whether the decision should be reversed.~~

~~Section 7. Implementation Date. The amendments to this administrative regulation shall be effective with regard to services provided on or after December 28, 1994.~~]

907 KAR 1:016E

REVIEWED:

Date	J. Thomas Badgett, MD, PhD, Acting Commissioner Department for Medicaid Services
Date	Mike Burnside, Undersecretary Administrative and Fiscal Affairs

APPROVED:

Date	Mark D. Birdwhistell, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:016E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements related to the provision of covered psychiatric hospital services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to the provision of covered psychiatric hospital services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in the authorizing statutes by establishing requirements related to the provision of covered psychiatric hospital services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements related to the provision of covered psychiatric hospital services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes the use of clinical criteria by the Department to determine the clinical appropriateness of delivered services. This amendment also includes technical and stylistic changes intended to improve clarity and flow, thereby bringing this administrative regulation into compliance with the provisions of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the clinical criteria established by 907 KAR 3:130 and to comply with the drafting requirements of KRS Chapter 13A.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the use of clinical criteria by the Department to determine the appropriateness of delivered services.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the use of clinical criteria by the Department to determine the appropriateness of delivered services.

(3) List the type and number of individuals, businesses, organizations, or state and

local government affected by this administrative regulation: This amendment will affect all psychiatric hospital service providers participating in the Kentucky Medicaid Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To receive reimbursement, this amendment will require psychiatric hospital services to meet the clinical criteria established in 907 KAR 3:130.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) is unable to determine a precise aggregate fiscal impact of the use of the criteria established in 907 KAR 3:130 to determine clinical appropriateness for multiple programs; however, anticipates a savings of at least $2.5 million ($1.7 million federal funds; $0.8 million state funds) annually.

(b) On a continuing basis: The Department for Medicaid Services (DMS) is unable to determine a precise aggregate fiscal impact of the use of the criteria established in 907 KAR 3:130 to determine clinical appropriateness for multiple programs; however, anticipates a savings of at least $2.5 million ($1.7 million federal funds; $0.8 million state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Ken-

tucky Constitution.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:016E (Psychiatric Inpatient Facility Utilization and Placement Review Manual)

Summary of Material Incorporated by Reference

The “Psychiatric Inpatient Facility Utilization and Placement Review Manual, June 2006 edition” is revised to insert language, consistent with the administrative regulation, regarding the use of criteria in 907 KAR 3:130 to determine whether a service is clinically appropriate. Part I, pages I.1, I-4, I-6, I-7. I-8, and Appendix I-3 are revised. The manual contains forty-nine (49) pages.